CHEOK SWEE LEE & 5 ORS.

v.

LOO CHOO TENG & 3 ORS.

HIGH COURT MALAYA, PULAU PINANG
TUAN JEFFREY TAN KOK WHA J
[CIVIL SUIT NO: 8 OF 1981]
8 JULY 1996

CIVIL PROCEDURE: *Pleadings - Amendment of statement of defence - Rules of the High Court 1980, O. 20 - Principles applicable in granting leave - Whether amendments change character of suit - Undue delay in application for amendment.*

This was an application by the 4th defendant for leave to amend his statement of defence which was filed almost 14 years ago, ie, on 24 August 1982.

The plaintiffs' action was originally brought against the first three defendants to enforce an agreement allegedly entered into between the plaintiffs and the 1st and 2nd defendants. The 1st and 2nd defendants were being sued as trustees for one Ong Joo Su, deceased. The 4th defendant, by an order of the Court dated 19 April 1982, was added as a defendant as he claimed that he had an interest in the subject matter of the proceedings.

The 4th defendant's defence is essentially a challenge on the validity of the agreement on three specific grounds, *viz:* (i) that the 1st and 2nd defendants entered into the agreement without the approval of the Court, in breach of trust, and in the absence of proper authority; (ii) the plaintiffs had knowledge that the 1st and 2nd defendants did not have the lawful authority to enter into the agreement; and (iii) the agreement had been terminated as the subject property was not released from the notice of acquisition (by the 3rd defendant) within two years from 8 July 1979.

There was, however, no specific traverse in the 4th defendant's defence to the allegations of fact made by the plaintiffs in their statement of claim that: (i) the 3rd defendant, apart from the gazette notification of its intention to acquire the subject property, had not taken any steps to acquire the subject property; (ii) the 1st and 2nd defendants failed to carry out and even attempted to rescind the said agreement; (iii) the 1st and 2nd defendants failed to complete the said agreement despite the plaintiffs' notice to them so to do; (iv) the plaintiffs were ready, willing, and able to complete the said agreement; (v) for the 2 years after 8 January 1979, the 3rd defendant had not intimated that it would refuse to release the subject property from the restrictions imposed by an acquisition; and (vi) the 3rd defendant has not taken any step towards the compulsory acquisition of the subject property.

In his proposed amendments, *inter alia*, the 4th defendant: (i) denied specifically the plaintiffs' allegations of fact as abovementioned (paras. 3 and 10); (ii) added a new defence to the effect that the agreement was made without his knowledge and/or consent (para. 4); and (iii) added a new defence to the effect that the purchase price of the subject property was below market value and that the sale was against the interest of the estate (para. 9).

Held:

[1] The overriding principle with regard to the grant or refusal of leave for amendments is that all amendments will be allowed at any stage of the proceedings (other than a judgment or order) which is reasonably necessary for the presentation of one's case on such terms as to costs or otherwise as the Court thinks just. Provided: (i) it is made *bona fide* with no undue delay on the applicant's part; (ii) the amendment will not injure or prejudicially affect any vested rights of the opponent; and (iii) they are not such as to turn a suit of one character into a suit of another and inconsistent character.

[2] An amendment duly made, with or without leave, takes effect not from the date when the amendment was made, but from the date of the original document which it amended. Therefore, leave for an amendment to introduce a new cause of action which did not exist at the time of the original writ would be refused.

[3] Bearing in mind that the 4th defendant's defence was basically that of a challenge to the legal capacity and powers of the 1st and 2nd defendants to enter into the agreement and not one of denial of the agreement, the gazette notification, or of the facts alleged by the plaintiffs, the proposed amendment to paras. 3 and 10 would be *volte face* and thus inconsistent with not only the character of the defence that was filed but also with the admissions and denials in the pleadings.

[4] The proposed para. 9 of the amended defence would turn the present character of the suit, from a contest on the 1st and 2nd defendants' legal capacity and powers or lack of it to enter into the agreement, into a suit with an additional contest on the fair market value of the subject property and the interests of the estate as a whole. That additional contest would not be consistent with the character of the present defence as the proposed para. 9 did not arise out of the same facts or substantially the same facts in respect of which the defence had been filed, but sprung forth reasonably from a set of facts quite unrelated to the defence that had been filed.

[5] The pleadings were closed in 1982, and for the 14 long years that had gone by, the 4th defendant has led, some might even say lulled, the plaintiff to believe that the case that he had to answer was the case at the stage

when the pleadings closed. That being so, an amendment now that would require the plaintiffs' answer, quite aside from the surprise element, would be less than fair, as it is inequitable, with the passage of 14 long years to require the plaintiffs to gather, if at all possible and if it is still around, the necessary rebuttal evidence.

[Leave granted in part]

Cases referred to:

Looi Guan Kway v. Low Lean Bok [1938] MLJ 35 ***(refd)***
Yamaha Motor Co. Ltd. v. Yamaha Malaysia Sdn. Bhd. [1983] 1 MLJ 213 ***(refd)***
Ponnusamy v. Nathu Ram [1959] MLJ 228 ***(refd)***
Jeyaretnam Joshua Benjamin v. Lee Kuan Yew [1990] 2 MLJ 65 ***(cit)***
Wong Ah Hee @ Wong Ah Mooi & Anor. v. Low Tuck Hoong [1994] 2 CLJ 313 ***(cit)***
Sneade v. Wotherton, etc. [1904] 1 KB 295 ***(cit)***
Ketteman & Ors. v. Hansel Properties [1987] 2 WLR 312 ***(cit)***
Simtech (M) Sdn. Bhd. v. Yeoh Cheng Liam Construction Sdn. Bhd. [1992] 1 MLJ 11 ***(cit)***
Sio Koon Lin v. S.B. Mehra [1981] 1 MLJ 225 ***(cit)***
Eshelby v. Federated European Bank [1932] 1 KB 254 ***(cit)***
Mahan Singh v. Government of Malaysia [1973] 2 MLJ 149 ***(refd)***
Yoong Leok Kee Corporation Sdn. Bhd. v. Chin Thong Thai [1981] 2 MLJ 21 ***(refd)***
Algemene Bank Nederland NV v. Happy Valley Restaurant Pte. Ltd. [1991] 2 MLJ 289 ***(refd)***
Seng Choon Hardware (M) Sdn. Bhd. v. The Director General of Kastam & Eksais Di Raja Malaysia and the Government of Malaysia [1993] 2 CLJ 114 ***(refd)***
Chin Kok Kwong Construction Sdn. Bhd. v. Sunrise Towers Sdn. Bhd. [1986] 2 MLJ 41 ***(refd)***
The "Virginia Rhea"; China Steel Corp. & Anor. v. MV "Virginia Rhea", Owners of [1983] 1 MLJ 198 ***(refd)***
Kwong Kum Sun Chan (M) Sdn. Bhd. [1994] 3 CLJ 326 ***(refd)***
United Overseas Bank Ltd. v. Heap Huat Rubber Co. Sdn. Bhd. [1993] 2 AMR 39 ***(refd)***

Legislation referred to:

Rules of the High Court 1980, O. 15 rr. 6, 7, 8, O. 18 rr. 13(1), (2), (3), 14(1),(3), O. 20 rr. 1(1), 5(1), (2), (3), (4), (5)

Other sources referred to:

Supreme Court Practice 1995 (UK), Vol. 1, p. 362, para. 20/5-8/2

For the applicant - K.L. Ong; M/s. Ghazi & Lim
For the plaintiff - R.R. Sethu (Raj Shankar with him); M/s. R. Rajasingam & Co.

JUDGMENT

Jeffrey Tan J:

Before the Court is the 4th defendant's application (enclosure 91 dated 11 April 1996) for leave to amend his statement of defence filed on 24 August 1982.

It is efficacious, for a better appreciation of the nature and extent of the proposed amendments, that the 4th defendant's proposed amended defence be replicated, and in its entirety, in this grounds. The proposed amended defence (proposed amendments are those emphasised or deleted) reads as follows:

Amended defence of the 4th defendant

1. At all material times ~~this~~ **the fourth** defendant was one of the two original executors and one of the two original trustees under the will of the said Ong Joo Sun deceased dated 17**th** May 1959 and he is also one of the beneficiaries thereunder. ~~This~~ **The fourth** defendant has been added as a party to these proceedings as he has an interest in the subject matter of the proceedings.

2. Paragraphs 1 and 2 of the amended statement of claim are admitted.

3. ~~This defendant admits.~~ **Save** that the third defendant has by gazette notification dated 25 April 1974 intimated its desire to acquire the said property, **the fourth defendant has no knowledge of the matters** alleged **in paragraph 3 of the amended statement** of claim and **puts the plaintiffs to strict proof thereof.**

4. ~~With regard to paragraphs 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14 of the statement of claim this defendant denies the validity of the alleged agreement in respect of the said property entered into between the plaintiffs and the first and second defendants.~~

4. In reply to paragraph 4 of the amended statement of claim, the fourth defendant denies the validity of the alleged agreement in respect of the said property purportedly entered into between the plaintiffs and the first and second defendant. The fourth defendant states that the alleged agreement was made without his knowledge and/or consent. The fourth defendant further states that the second defendant had no authority to execute the agreement as attorney of the said Ong Thai Hong as Ong Thai Hong had been discharged as a trustee pursuant to a Court Order dated 5 October 1978. The fourth defendant will refer to the Court Order dated 5 October 1978 for its full terms and effect.

5. Further and in the alternative, the fourth defendant, will state that Ong Thai Hong could not legally delegate the second defendant as his attorney the duties of a trustee to administer the estate of Ong Joo Sun, deceased.

6. Further and in the alternative, the fourth defendant will state that the said sale agreement is invalid and in breach of the Order of Court dated 25 August 1975 in Originating Summons No. 156 of 1975. The fourth defendant will refer to the Court Order dated 25 August 1975 for its full terms and effects.

~~5.~~**7.** Further in the alternative this defendant says that the first and second defendants could not lawfully enter into the said agreement as the first and second defendants cannot enter into any agreement without prior approval of Court and without the prior approval of this defendant. This defendant contends and will contend that the first and second defendants have exercised their powers in breach of trust, improperly and without lawfully authority.

8. The fourth defendant therefore denies the validity of the said sale agreement and paragraphs 4 to 13, of the Amended Statement of Claim and puts plaintiffs to strict proof thereof.

9. The fourth defendant further states that the purchase price stated in the alleged agreement is below market value and the sale of the said property is against the interest of the estate as a whole.

10. The fourth defendant has no knowledge of the matters referred to in paragraphs 13 to 16 of the amended statement of claim and puts the plaintiffs to strict proof thereof.

~~6.~~**11.** As for paragraph 15 this defendant repeats paragraph 5-7 above and says that at all material times the plaintiffs were aware that the first and second defendants did not have lawful authority to enter into the alleged agreement.

~~7.~~**12.** This defendant has no knowledge of the facts alleged in paragraph 16 of the statement of claim and insofar as it relates to the provisions of clause 5 of the alleged agreement this defendant repeats paragraphs 4, 5, 6, 7, 8 and 9 above.

~~8.~~**13.** This defendant will also contend that even if the alleged agreement is valid, which is denied, the agreement has been terminated as the property was not released from the notice of acquisition within a period of two years from 8 July 1979.

~~9.~~**14.** Save as hereinbefore specifically admitted this defendant denies each and every allegation contained in the statement of claim as though the same were herein set forth and traversed seriatim.

~~10.~~**15** This defendant prays that the plaintiffs' claim be dismissed with costs.

Dated delivered the day of , 1996.

Signed Illegible

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Solicitors for the fourth defendant

Redated this day of , 1996

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Solicitors for the fourth defendant

Not all amendments of pleadings require the leave of the Court (see O. 20 r. 1(1) RHC 1980); where leave is required, as in the instant case, the Court, subject to O. 15 rr. 6,7 and 8 and the provisions of O. 20 r. 5, may allow at any stage of the proceedings the proposed amendments on such terms as to costs and in such manner as it may direct (see O. 20 r. 5(l)).

The overriding principle with regard to the grant or refusal of leave for amendments, be it before or during the trial, is summarised in the *English Supreme Court Practice 1995* (Vol. 1) at page 362, as follows:

> The overriding principle with regard to amendments is that contained in r. 8, namely, that, generally speaking, all amendments will be allowed at any stage of the proceedings (other than a judgment or order) on such terms as to costs or otherwise as the Court thinks just. This principle is subject to the countervailing rule of practice that an amendment will be refused, or disallowed when, if it were made, it would result in prejudice or injury which cannot be properly compensated for by costs. Accordingly, as a general rule, either party is allowed to make any amendment to his own pleadings or other proceedings which is reasonably necessary for the presentation of his case on payment of the costs of and occasioned by the amendment, provided there has been no undue delay on his part, and provided also the amendment will not injure or prejudicially affect any vested rights of his opponent. But if the application is made *mala fide*, or if the proposed amendment is sought to be made after undue delay, or will in any other way unfairly prejudice or cause detriment to the other party, or is irrelevant or useless or would raise merely a technical point, leave to amend will be refused.

Indeed, that overriding principle is found in all reported decisions, notwithstanding the enunciation, in the course of the development of the law, of other subsidiary principles. The earliest reported decision of the local Courts is *Looi Guan Kway v. Low Lean Bok* [1938] MLJ 35, where Aitken J, in an application to amend the plaint, after a survey of the relevant authorities, restated the following subsidiary principles, (1) there is *bona fides* on the part of the applicant, (2) the amendment cause no prejudice to the other side which cannot be compensated by costs, and (3) they are not such as to turn a suit of one character into a suit of another and inconsistent character, and which subsidiary principles, the Federal Court in *Yamaha Motor Co. Ltd. v. Yahama Malavsia Sdn. Bhd.* [1983] 1 MLJ 213, restructured into 3 basic questions to be considered by the Court to determine whether injustice would or would not result if an amendment is allowed.

A further subsidiary principle is found in *Ponnusamy v. Nathu Ram* [1959] MLJ 228, where it was held that the Court should consider the materiality and the effectiveness of an amendment, and would not allow an amendment

where it would appear that such an amendment would be useless. An amendment bringing in an untenable defence (see *Jeyaretnam Joshua Benjamin v. Lee Kuan Yew* [1990] 2 MLJ 65) or an amendment bringing in a relief that the Court has no powers to grant (see *Wong Ah Hee @ Wong Ah Mooi & Anor. v. Low Tuck Hoong* [1994] 2 CLJ 313), are ineffectual amendments, and would fall into the category of useless amendments.

Within those general guidelines, leave may be given to any party, (a) to amend his pleadings - see O. 20 r. 5(l), (b) to correct the name of a party - see O. 20 r. 5(3), (c) to alter the capacity in which a party sues - see O. 20 r. 5(4), notwithstanding that the effect of the amendment may be to substitute a new party (see the circumstances in r. 5(3)] or to add or substitute a new cause of action, and the latter, if the new cause of action arises out of the same facts or substantially the same facts as a cause of action in respect of which relief has already been claimed in the action by the party applying for leave to make the amendment (see the circumstances in r. 5(5)) and notwithstanding that the application for leave is made after the relevant period of limitation current at the date of the issue of the writ has expired (see r. 5(2)).

An amendment duly made, with or without leave takes effect not from the date when the amendment is made, but from the date of the original document which it amends (see the *English Supreme Court Practice 1995* (Vol. 1) para. 20/5-8/2) such that "the writ as amended becomes the origin of the action, and the claim thereon indorsed is substituted for the claim originally indorsed" (per Collins MR in *Sneade v. Wotherton, etc* [1904] 1 KB 295 at page 297; see also *Ketteman & Ors. v. Hansel Properties* [1987] 2 WLR 312 and *Simtech (M) Sdn. Bhd. v. Yeoh Cheng Liam Construction Sdn. Bhd.* [1992] 1 MLJ 11). Therefore, leave for an amendment to introduce a new cause of action which did not exist at the time of the original writ would be refused (see *Sio Koon Lin v. S.B. Mehra* [1981] 1 MLJ 225; *Eshelby v. Federated European Bank* [1932] 1 KB 254; [1932] 1 KB 423 CA).

The following cases, from a series *rerum judicatarum,* demonstrate sufficiently the Courts' use, dealing with a proposed amendment, of either one and or more of those principles.

In *Mahan Singh v. Government of Malaysia* [1973] 2 MLJ 149, a case that revolved around pure questions of law, the amendment - a contention that the public service regulation was *ultra vires* the ordinance and Article 150 of the Constitution - not one that would cause prejudice to the other side which cannot be compensated by costs was allowed during the course of the trial. That the Court has the discretionary powers to allow an amendment "at any stage of the proceedings" is illustrated in the case of *Yoong Leok Kee Corporation Sdn. Bhd. v. Chin Thong Thai* [1981] 2 MLJ 21 where the Federal Court affirmed the trial Court's leave for the amendment of the

statement of claim, in line with the evidence adduced, after the trial had concluded. It must be said however that an amendment after trial had concluded or after the plaintiff had closed its case is not the usual practice, as an amendment at those stages in a proceeding would usually cause such prejudice or injury that could not be properly compensated for by costs (see (1) *Algemene Bank Nederland NV v. Happy Valley Restaurant Pte. Ltd.* [1991] 2 MLJ 289 where an amendment of a material nature to the defence after the plaintiff had closed its case was held to be prejudicial, as the plaintiffs had disclosed its case, and the evidence that the plaintiffs had adduced would have depended on the allegations that the plaintiffs had to meet, and (2) *Seng Choon Hardware (M) Sdn. Bhd. v. The Director General of Kastam & Eksais Di Raja Malaysia and the Government of Malaysia* [1993] 2 CLJ 114, where a proposed amendment to the defence, bringing in a complete defence after the plaintiff had closed its case, was refused).

On amendments that would turn a suit of one character into a suit of another and inconsistent character, the proposed amendments in (i) to (iii) below were all held to be amendments that would introduce a new cause of action, while the proposed amendment in (iv) was held to be an amendment that would change the character of the suit:

(i) the addition, to a claim for the return of a deposit paid under a sale and purchase agreement, of a prayer for the recovery of money allegedly due and owing by the defendant to the plaintiff under a building contract (see *Chin Kok Kwong Construction Sdn. Bhd. v. Sunrise Tower Sdn. Bhd.* [1986] 2 MLJ 41)

(ii) the insertion under r. 1(1) of a 5th bill of lading to 4 bills of lading identified by their numbers in the writ (see *The "Virginia Rhea"; China Steel Corp. & Anor. v. MV "Virginia Rhea", Owners of* [1983] 1 MLJ 198)

(iii) a claim for damages for repudiation of an agreement in addition to a claim for damages for breach of undertakings to enter into fresh agreements (see *Kwong Kum Sun Chan (M) Sdn. Bhd*. [1994] 3 CLJ 326),

(iv) the "amplification" of a defence (that the loan agreements are "void and/or unenforceable against the defendants who have otherwise provided sufficient consideration for the loans as expressly requested by the plaintiff") that the said loan agreements "are void and/or unenforceable for illegality and that its enforcement would be contrary to public policy in Singapore and of defrauding the public administration of Singapore" (see *United Overseas Bank Ltd. v. Heap Huat Rubber Co. Sdn. Bhd.* [1993] 2 AMR 39)

In the instant case, the 4th defendant's defence is quintessentially a challenge to the validity of the agreement that the plaintiffs seek to specifically enforce; paragraph 4 is the plea in general, while paragraphs 5, 6 & 8 are the 3 specific grounds - (i) the 1st and 2nd defendants entered into the agreement without

the approval of Court, in breach of trust and in the absence of proper authority (ii) the plaintiffs had knowledge that the 1st and 2nd defendants did not have the lawful authority to enter into the said agreement, and (iii) the agreement has been terminated as the subject property was not released from the notice of acquisition within 2 years from 8 July 1979 - for the invalidity of the agreement.

That being the substance and spirit of the defence, the suit, between the plaintiffs and the 4th defendant, is that of a claim for the specific performance of an agreement and a defence that the 1st and 2nd defendants had no authority or powers to enter into the agreement. That is the undoubted character of the present suit. However, the proposed paragraph 9 of the amended defence, to wit, that the purchase price of the subject property "is below market value" and that the sale "is against the interest of the estate", would turn the present character of the suit, from a contest on the 1st and 2nd defendants' legal capacity and powers or lack of it to enter into the agreement, into a suit with an additional contest on the fair market value of the subject property and the interests of the estate as a whole. That additional contest would not be consistent with the character of the present defence, as the proposed paragraph 9 does not arise out of the same facts or substantially the same facts in respect of which the defence has been filed, but springs forth reasonably from a set of facts quite unrelated to the defence that has been filed, unlike *Yamaha Motor Co. Ltd. v. Yahama Malaysia Sdn. Bhd. & Ors. (supra)* where the allegation of fraud, even assuming it is a new cause of action, arises from the same facts as the original action.

There is reason furthermore not to allow the proposed paragraph 9. Pleadings closed in 1982, and for the 14 long years that have gone by, the 4th defendant has led, some might even say lulled, the plaintiff surely to believe that the case that he has to answer is the case at the stage when pleadings closed. That being so, an amendment now that would require the plaintiff's answer, quite aside from the surprise element, would be less than fair, as it is inequitable, with the passage of 14 long years to require the plaintiff to gather, if at all it is possible and if it is still around, the necessary rebuttal evidence.

A prompt application is always necessary to invoke the Court's exercise of its discretionary powers, but the delay in the instant application is such, and inordinate would not adequately describe the gross delay, that even assuming that the proposed paragraph 9 arises from the same set of facts as the defence that has been filed, the Court would be hard pressed indeed to allow an amendment that the 4th defendant by his "care-less" conduct has already forsaken.

All that is said in this grounds on the proposed paragraph 9 is equally applicable to the proposed amendment to paragraph 3 and the proposed paragraph 10; but the mischief and prejudice that would be caused by the latter proposed amendments extend beyond that of O. 20. Order 18 r. 13(l) provides that

"subject to paragraph (4), any allegation of fact made by a party in his pleadings is deemed to be admitted by the opposite party unless it is traversed by that party in his pleading or a joinder of issue under r. 14 operates as a denial of it". A traverse "may be made either by a denial or by a statement of non-admission and either expressly or by necessary implication" (see O. 18 r. 13(2)), but a party who does admit an allegation of fact in a statement of claim or counter-claim must do so specifically, as a general denial or a general statement of non-admission a not a sufficient traverse [see r. 13(3)). There is an implied joinder of issue if there is no reply to a defence (see r. 14(1)) but there is no joinder of issue, implied or express on a statement of claim or counter-claim (see r. 14(3)).

There is no specific traverse in the present defence to the allegations of fact made by the plaintiffs in their statement of claim that, (i) the 3rd defendant apart from the gazette notification of its intention to acquire the subject property has not taken any steps to acquire the subject property (ii) the 1st and 2nd defendants failed to carry out and even attempted to rescind the said agreement (iii) the 1st and 2nd defendants failed to complete the said agreement despite the plaintiffs' notice to them so to do (iv) the plaintiffs are ready willing and able to complete the said agreement (v) for the 2 years after 8 January 1979, the 3rd defendant had not intimated that it would refuse to release the subject property from the restrictions imposed by an acquisition, (vi) the 3rd defendant has not taken any step towards the compulsory acquisition of the subject property, and those allegations of fact must be deemed as admitted by the 4th defendant.

However, the proposed amendment to paragraph 3 and the proposed paragraph 10 would be a *volte face,* and the same is also true of the amendment "the 4th defendant states that the alleged agreement was made without his knowledge and/or consent" in the proposed paragraph 4, as the present defence is not one of denial of the agreement, the gazette notification or of the facts alleged by the plaintiffs, but is one of a challenge to the legal capacity and powers of the 1st and 2nd defendants to enter into the said agreement. Therefore, the proposed amendment to paragraph 3 and the proposed paragraph 10 are inconsistent with not only with the character of the defence that has been filed but also with the admissions and denials in the pleadings.

As for the rest of the proposed amendments, the proposed amendment to paragraph 1, being a mere modification of words, should not be refused, while the proposed paragraphs 4 (save for the allegation "the 4th defendant states that the alleged agreement was made without his knowledge and/or consent"), 5, 6, 7, & 8, being from the same set of facts as ground (i) for the invalidity of the agreement in the defence already filed, namely, that the 1st and 2nd defendants entered into the agreement without the approval of Court, in breach of trust and in the absence of proper authority, should be allowed, for notwithstanding the gross inordinate delay the proposed paragraphs 4, 5, 6, 7

& 8, unlike the proposed paragraph 9, would not prejudice the plaintiff to an extent that costs would not be a proper compensation. It might even be said that the plaintiffs far from being prejudiced would even be helped by those amendments, as the plaintiffs would have, with the amplification of the present paragraphs 4 & 5, prior notice of more of the "facts" that the 4th defendant would be relying on at the trial and thus would be better equipped to marshal their rebuttal evidence.

Accordingly, leave is allowed to the 4th defendant to amend his defence in the manner set out in paragraphs 1, 4 (without the words "the 4th defendant states that the alleged agreement was made without his knowledge and/or consent") 5, 6, 8 of the proposed amended defence; leave to amend the defence in the manner set out in paragraphs 3, 9 and 10 of the proposed amended defence is refused; the 4th defendant is to file his amended defence in the manner allowed within 14 days from the date of this order, and with leave to the plaintiffs to file a reply or amended reply within 14 days from the date of service of the 4th defendant's amended defence; the costs of and occasioned by this application is to be borne by the 4th defendant in any event.

Reported by Lee Teng Joo